November 5, 1999

D.T.E. 98-48-Phase I

Petition of Fitchburg Gas and Electric Light Company for approval by the Department of Telecommunications and Energy of its Low-Income Gas Conservation/Education Program.

D.T.E. 98-49-Phase I

Petition of Fitchburg Gas and Electric Light Company for approval by the Department of Telecommunications and Energy of its Five-Year Energy Efficiency Plan, including its Low-Income Electric Conservation/Education Program, covering the period 1998-2003.

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FOR: FITCHBURG GAS AND ELECTRIC LIGHT COMPANY

<u>Petitioner</u>

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FOR: BERKSHIRE GAS COMPANY

FALL RIVER GAS COMPANY

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I. INTRODUCTION

On May 1, 1998, Fitchburg Gas and Electric Light Company ("Fitchburg" or "Company") filed with the Department of Telecommunications and Energy ("Department") its Five Year Energy Efficiency Plan ("Energy Efficiency Plan") for electric service covering the period 1998-2002. The Department docketed the filing as D.T.E. 98-49. On May 15, 1998, Fitchburg filed its Low-Income Gas Conservation/Education Program. The Department docketed the filing as D.T.E. 98-48. Because the programs for low-income gas conservation and education are included in the Energy Efficiency Plan, the Department consolidated the two filings as D.T.E. 98-48/49. The filings were the Company's response to Electric Industry Restructuring Plan: Model Rules and Legislative Proposal, D.P.U. 96-100 at 66-67 (May 1, 1996) that require investor-owned electric utilities to provide, for Department approval, an Energy Efficiency Plan, and the Electric Restructuring Act of 1997, Chapter 164 ("Restructuring Act").

Pursuant to notice duly issued, the Department held four hearings on June 22, June 29, November 6, and December 9, 1998. The Attorney General of the Commonwealth

("Attorney General") filed notice of intervention pursuant to G.L. c. 12, §11E. The Department granted petitions for leave to intervene filed by the Commonwealth of Massachusetts' Division of Energy Resources ("DOER"), the Northeast Energy Efficiency Council ("NEEC"), and the National Consumer Law Center ("NCLC"). The Department also granted limited participant status to Cambridge Electric Light Company, Commonwealth Electric Company, Commonwealth Gas Company, Berkshire Gas Company and Fall River Gas Company.

On July 27, 1998, the Attorney General, DOER, NEEC, and NCLC (together non-utility parties or "NUPs") filed joint comments on Fitchburg's Energy Efficiency Plan, and on August 4, 1998, Fitchburg filed a reply. Subsequently, on September 30, 1998 the NUPs filed a joint motion to defer proceedings on the non-Lost Base Revenue ("LBR") portions of the Energy Efficiency Plan until a decision on the appropriateness of LBR recovery is forthcoming from the Department. Fitchburg supported the NUP motion, and the Department granted the motion on November 6, 1998. With respect to the issue of LBR, Fitchburg sponsored the testimony of Frederick J. Stewart, vice president for regulatory affairs for UNITIL Service Corporation[(1)] ("UNITIL"). DOER sponsored the testimony of Henry Yoshimura, senior manager of economics and public policy for Xenergy Consulting, Inc. In January 1999, the Attorney General and DOER filed briefs and Fitchburg filed a reply brief. This Order, D.T.E. 98-48/49 Phase I, addresses only the issue of LBR on the sale of electricity.[(2)]

II. BACKGROUND ON LOST BASE REVENUE

LBR occurs when the implementation of Demand Side Management or energy efficiency programs results in decreased sales of electricity, compared to the base level of sales projected in a company's most recent rate case. In its decision to institute LBR recovery, the Department, in Integrated Resource Management, D.P.U. 86-36-F (1988), provided for adjustments to a company's rates if the company demonstrated that the performance of energy efficiency programs resulted in erosion of sales that adversely affected revenues in a significant, quantifiable way.

In Western Massachusetts Electric Company, D.P.U. 95-8-CC Phase II (1995), the Department refined its LBR recovery policy so that companies could recover LBR for a particular year's DSM implementation only for a specified number of years, based on the average time period between a company's four most recent rate cases. This calculation, known as the rolling period method, resulted in a rolling period of 4.5 years for Fitchburg. See Fitchburg Gas and Electric Light Company, D.P.U. 95-5-CC (1995).

The Restructuring Act directed the Department to require a mandatory charge to fund energy efficiency activities from ratepayers for the years 1998 through 2002. G.L. c. 25, § 19. With the statutory requirement to assess ratepayers, electric companies, with the exception of Fitchburg, eliminated LBR recovery from their respective Energy Efficiency Plans.[3]

Fitchburg's proposed energy efficiency budgets range from $1,542,000 for 1998/1999 to $1,289,000 for 2002/2003 (Exh. FGE-1, at 6). LBR is projected to consume $258,000 to $259,000 of each year's energy efficiency budget (id. at 17).

III. POSITIONS OF THE PARTIES

A. NUPs

The NUPs, in their joint comments, claimed that Fitchburg's Energy Efficiency Plan is neither complete nor sufficiently documented, and that it does not comply with D.P.U. 96-100 or with the Restructuring Act.

DOER contends that LBR recovery is inconsistent with the intent of the Restructuring Act (DOER Brief at 2-3). DOER raises two principal objections. First, DOER asserts that the Restructuring Act requires energy efficiency funding and therefore LBR is not needed as an incentive to undertake energy efficiency programs (id. at 6-7). Second, according to DOER, because the mandatory energy efficiency charge should fund cost-effective energy efficiency activities to the maximum extent possible, use of ratepayers funds for LBR recovery would be unwise, as it would not give ratepayers maximum value for their money (id. at 3, 7-8).

DOER stated that the Department originally authorized LBR recovery to place energy efficiency resources on a level playing field with generation resources, when each electric company had an obligation to secure generation resources for its customers (Exh. DOER-3, at 8). Because of a direct relationship between costs and sales for an integrated electric utility company, DOER indicated that LBR recovery ensured that a company did not under-collect the revenue requirement allowed the company in its most recent rate case (id. at 10-12).

According to DOER, Fitchburg is asking for combined incentives and LBR amounting to 16 to 20 percent of its energy efficiency budget (id. at 7). In contrast, DOER asserts that other electric companies agreed to forego LBR, but received the opportunity to earn up to about 13 percent of the energy efficiency budgets by achieving specific program goals (id. at 6). DOER argues that it would be unfair to deny Fitchburg customers the full benefits that ratepayers of other electric companies receive for their statutory energy efficiency charges (DOER Brief at 10).

DOER states that Fitchburg is selling much more electricity than in its most recent test year (1983) and that its annual sales gains were ten times its annual energy efficiency savings, so that Fitchburg is not under-collecting its revenue requirement (id. at 8, citing Exh. DOER-3,

at 27-28). According to DOER, Fitchburg was earning a 23.8 percent rate of return on equity, substantially higher than the 16.3 percent rate of return allowed in its last rate case and much higher than the 11 percent rate of return on equity needed to attract capital on reasonable terms (Tr. at 227, 286-287; DOER Brief at 8, citing Exh. DOER-3, at 26-28). DOER maintains that even if continued LBR recovery is not allowed, Fitchburg will still earn a return on equity greater than 22 percent, a level that would not impair its financial integrity (DOER Brief at 8-9).

DOER maintains that with divestiture, stranded cost recovery, and the coming of a competitive generation market, Fitchburg no longer has the obligation to secure generation resources for its customers, and therefore no longer incurs LBR for generating plant (id. at 4-5).[(4)] Moreover, DOER claims that Fitchburg incurs no LBR for transmission and distribution ("T&D") investments, since loads could grow within a wide range before any T&D investments would be needed (id. at 4-6).[(5)]

DOER responded to Fitchburg's statement that if LBR recovery were not allowed, Fitchburg would redesign and implement programs to minimize savings in its service area, allotting money only to educational and regional market transformation programs (Tr. at 120-121; Exh. FGE-1, at 4, 8-9). DOER contends that such action would violate sound public policy and could be inconsistent with the Restructuring Act, which requires that the Department review and approve energy efficiency expenditures after determining that implementation of such programs is cost-effective (DOER Brief at 11-12, citing G.L. c. 25, § 19 and c. 25A, § 11G). DOER states that the Restructuring Act does not require distribution companies to be the energy efficiency service providers in their service territories, but does require DOER to oversee and co-ordinate ratepayer-funded energy efficiency programs (id.). DOER argues that possible outsourcing of Fitchburg's energy efficiency programs is within the Department's (and DOER's) purview, given Fitchburg's reluctance to use ratepayer energy efficiency funds to achieve savings, absent LBR recovery (DOER Brief at 4).

B. Fitchburg

Fitchburg agrees with DOER that the Restructuring Act does not address LBR, but interprets this to mean that the Legislature did not overturn the Department's existing LBR

policy (Fitchburg Brief at 8-9). Fitchburg claims that the Restructuring Act heightens Fitchburg's need for LBR recovery, because it almost triples Fitchburg's energy efficiency budget and could triple the amount of savings achieved (id. at 10-11). Fitchburg argues that LBR recovery was instituted to avoid degradation in earnings from implementing energy efficiency (id. at 12). Fitchburg further argues it cannot reduce the savings from energy efficiency measures already installed and therefore cannot avoid reductions in its revenue caused by those measures

(id. at 11-12).

Fitchburg states, in answer to DOER's argument that LBR is for leveling the playing field between supply-side and demand-side resources, that it made no investments in rate based supply-side generation resources during the years it implemented energy efficiency programs (id. at 13-14). Answering DOER's contention that Fitchburg's earnings are so high that it is greatly over-collecting the revenues authorized in its most recent rate case, Fitchburg cites Eastern Edison, D.P.U. 94-4-CC at 41-42 (1994), which says "recovery of LBR should account for lost revenues, not lost earnings" (Fitchburg Brief at 16). Fitchburg states that it relied on previous Department orders authorizing LBR recovery in implementing energy efficiency programs, much of whose associated LBR remains unrecovered (id. at 11-12).

IV. ANALYSIS AND FINDINGS

In the Restructuring Act, the Legislature provided that, beginning on March 1, 1998, each ratepayer must pay specific rates to fund energy efficiency activities. G.L. c. 25, § 19. The Restructuring Act requires that distribution companies collect no money for energy efficiency programs beyond the amounts specified in the law and that they coordinate low-income energy efficiency programs to standardize their implementation. Id. The Restructuring Act sets guidelines for use of energy efficiency funds and requires that DOER oversee and co-ordinate ratepayer-funded energy efficiency programs. G.L. c. 25A, § 11G. The Restructuring Act further requires that the Department review programs to assess their cost-effectiveness (id.).

Before the Restructuring Act, the Department instituted economic incentives and LBR recovery to induce utility companies to conduct energy efficiency programs voluntarily, so that they might secure energy more inexpensively than they could do from supply-side resources. Western Massachusetts Electric Company, D.P.U. 89-260 (1990) at 104; D.P.U. 86-36-F (1988) at 32-36. However, the Restructuring Act fundamentally changed the environment for energy efficiency programs. Because the Restructuring Act mandates collection of money earmarked to fund cost-effective energy efficiency programs, the Department finds that LBR recovery is no longer necessary to induce a distribution company to undertake voluntarily energy efficiency programs that are mandated.

Accordingly, the Department denies Fitchburg's proposal to use part of the mandated energy efficiency funding for LBR recovery. Therefore, Fitchburg shall not collect LBR after the retail access date, March 1, 1998, for its energy efficiency programs, and must credit to its energy efficiency programs all money collected since March 1, 1998 for such LBR recovery, with interest at the Company's weighted cost of capital from the Company's most recent rate case.

Although incentives are no longer required to motivate a company to conduct energy efficiency programs, the Department realizes that proper incentives can motivate a company to conduct them well. Such incentives are being addressed in a pending docket, Notice of Inquiry (NOI), Electric Industry Energy Efficiency Cost Effectiveness, D.T.E. 98-100.

The Department directs Fitchburg to revise its Energy Efficiency Plan in light of this Order. The Department also directs Fitchburg to work with DOER, which is required by the Restructuring Act to oversee and coordinate energy efficiency programs and recommend funding levels to the Department, in revising its Energy Efficiency Plan. See G.L. c. 25A, § 11G.

With respect to Fitchburg's statement that if LBR recovery were not allowed, FG&E would redesign and implement programs to minimize savings, limiting money to educational and regional market transformation programs, the Department agrees with DOER's contention that such action could be inconsistent with the Restructuring Act, which requires that the Department review and approve Energy Efficiency Plan expenditures after determining that implementation of such programs was cost-effective. The Department directs Fitchburg to revise its Energy Efficiency Plan and make it consistent with the requirements of the Restructuring Act. The Department will not approve plans to spend funds collected from ratepayers for programs that are not cost-effective.

V. ORDER

Accordingly, after due notice, hearing and consideration it is hereby

ORDERED: That Fitchburg Gas and Electric Light Company shall not recover Lost Base Revenue for any electric programs after the retail access date of March 1, 1998, and shall allocate any money allocated after that date for that purpose, with interest at the Company's weighted cost of capital from the Company's most recent rate case, to its energy efficiency programs; and it is

FURTHER ORDERED: That Fitchburg Gas and Electric Light Company shall, within ninety days of the date of this Order, file with the Department of Telecommunications and Energy a revised Energy Efficiency Plan for 1998-2003.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Paul B. Vasington, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

TO: Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

FROM: Gerry Bingham, EPD; Gene Fry, EPD; Margaret Lynch, Hearing Officer

DATE: October 25, 1999

RE: Lost Base Revenue Recovery in D.T.E. 98-48/49 (Fitchburg 5-Year Energy Efficiency Plan)

DECISION/ACTION SOUGHT: Approval and Signing of D.T.E. 98-48/49 Phase I,

Treatment of Lost Base Revenue

REVIEWED BY: Lucy Johnston, Assistant Director EPD; Barry Perlmutter, EPD

Patricia Crowe, A.G.C.

C.C. Paul Afonso, General Counsel

<u>Summary</u>

The attached draft is Order, D.T.E. 98-48/49 Phase I, that deals with the appropriateness of Fitchburg's use of lost base revenue in its Five-Year Energy Efficiency Plan.

The Order expresses the decision of the Commission in executive session on Wednesday, August 4, 1999, that no recovery of lost base revenue is appropriate after the retail access date of March 1, 1998, and that any recovery after that date shall be returned to DSM/Energy Efficiency Plan programs with interest charges. The Order suggests that the Company file a revised Energy Efficiency Plan within ninety days.

1. UNITIL and Fitchburg are wholly owned subsidiaries of UNITIL Corporation. UNITIL provides services to Fitchburg, including the preparation of Fitchburg's regulatory filings.

2. On April 30, 1999, by letter to the Company, the Department approved the Company's request for interim approval of its amended Energy Efficiency Plan effective May 1, 1999 in order to prevent disruption of ongoing programs.

3. Except for Fitchburg, each Energy Efficiency Plan submitted to the Department was a settlement between the electric company and the NUPs, including DOER, and increased levels of shareholder incentives, but not LBR recovery. See, e.g., Boston Edison Company, D.P.U. 97-86 (1998); Cambridge Electric Light Company, Commonwealth Electric Company, D.T.E. 98-16 (1998); Eastern Edison, D.P.U. 97-91(1997); Massachusetts Electric Company, D.T.E. 97-77 (1998).

4. The stranded cost charge is reconciled for changes in sales, thus providing complete recovery of the dollar value of fully mitigated stranded costs. See Fitchburg Gas and Electric Light Company, D.T.E. 97-115 (January 15,1999) at 57, citing Exh. FGE-1 (Fitchburg Restructuring Plan), Tab. E at Exh.-1, Sch.1, at 4.

5. Fitchburg charges new customers for line extensions to serve them (Tr. at 298).